

# ENFORCEMENT POLICY

2024 - 2027



NEWCASTLE  
UNDER LYME  
BOROUGH COUNCIL

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## 1.0 INTRODUCTION

Fair and effective enforcement is essential for the economic interest and protection of the public, business and the environment.

This enforcement policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with legislation enforced by Newcastle-under-Lyme Borough Council. This policy applies to all areas except Planning, which is available [here](#).

The decisions of the Council and its officers about enforcement action, and in particular the decision to prosecute, have serious implications for all involved. The aim of this policy is to set out the principles that apply when the Council conducts its enforcement work and should be read in conjunction with the [Officers scheme of delegation](#). By applying the same principles, everyone involved in the decision-making process is treated fairly, and our business is conducted effectively.

This Policy is adopted by Newcastle-under-Lyme Borough Council (hereafter referred to as 'the Council').

Specific guidance on the particular approach may also be provided – any additional guidance will be in accordance with the approach taken by this policy. For example Regulatory Services has additional guidance that sits below the Enforcement Policy to guide housing law decisions which is available [here](#).

The Council believes that most businesses and individuals want to abide by the law and will assist them where possible. The Council recognises that prevention is better than cure, but firm action will be taken against those who break the law or act irresponsibly.

## 2.0 PRINCIPLES AND PROCEDURES FOR GOOD ENFORCEMENT

The Council has adopted the Central and Local Government Concordat on Good Enforcement. The Legislative and Regulatory Reform Act 2006 also places a duty on the Council to have regard to the 'Principles of Good Regulation' when exercising specified regulatory functions.

The 'Principles of Good Regulation' together with the principles set out in the Concordat, are intended to ensure:

- **Standards:** provide and publish clear standards setting out the level of service and performance provided by the Council.
- **Openness:** provision of information and advice in plain language about how we carry out our work, including consultation with stakeholders.



- **Helpfulness:** provision of advice and assistance on compliance in a courteous efficient and prompt manner.
- **Proportionality:** when making a decision on appropriate enforcement action, Officers will, where discretion is allowed, consider both the circumstances of the case and history of the parties involved and will ensure that the remedial action required is proportionate to the risks and/or disadvantage created by the non-compliance, that it reflects any advice issued by Central Government or other co-ordinating bodies and takes into consideration relevant advice, Policy and the aims of the Council.
- **Consistency:** duties to be carried out in a fair, equitable and consistent manner and with arrangements in place to promote consistency.
- **Transparency:** access to information regarding regulatory procedures and decisions to be freely available.
- **Accountability:** the Council will be accountable for the efficiency and effectiveness of its regulatory activities.
- **Targeting:** the Council accepts that its enforcement resources are limited and, where appropriate, this should be focused on those persons or companies whose activities give rise to the risks which are most serious or least well controlled on their own premises or public open space. Enforcement is informed through intelligence arising from an investigation or complaints, planned projects, special surveys, enforcement initiatives or as a requirement from a Government Department.
- **Confidentiality:** the Council will ensure information provided in confidence is treated accordingly.

## 2.1 The Regulator's Compliance Code

The Council will have regard to the Regulators' Compliance Code with a view to achieving regulatory outcomes without imposing unnecessary burdens on businesses, organisations and other regulated entities.

The Regulators' Code states that Regulators should;

- Carry out their activities in a way that supports those they regulate to comply and grow.
- Provide simple and straightforward ways to engage with those they regulate and hear their views.
- Base their regulatory activities on risk.
- Share information about compliance and risk.
- Ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
- Ensure that their approach to their regulatory activities is transparent.



In certain instances, we may conclude that the provision of the Regulators' Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the code will be properly reasoned, based on material evidence, and documented.

## 2.2 Our Aims

We will

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore or redress the harm caused by regulatory non-compliance, where appropriate; and
- aim to deter future non-compliance.

## 2.3 Our Objective

Our primary enforcement objective is to achieve regulatory compliance. There are a wide range of tools available to us to achieve compliance. Where enforcement action is deemed appropriate we will choose an enforcement method that is relevant and proportionate to the offence or contravention.

## 2.4 Our approach to enforcement

Each case is unique and will be considered on its own facts and merits.

In arriving at a decision to recommend formal action officers will be fair, independent, and objective.

We will not let any personal views about ethnic or national origin, sex, age, religious beliefs, political views, or sexual orientation of the suspect, victim or witness influence their decisions.

We will not be affected by improper or undue influence from any source.

We will comply with the relevant codes of the Police and Criminal Evidence Act 1984. This Act applies to all enforcement bodies, including local authority enforcement teams



We will take account of both national priorities for local government enforcement together with local priorities based on evidence or emerging need. We will focus enforcement on matters;

- with the greatest risk to public health, safety, animal health, the economic or environmental wellbeing of the community,
- those where we believe there is an expectation from our residents, businesses or elected members that action should be taken,
- to achieve the priorities of the Council including those set out in [Council's Plan](#).
- where repeated incidents or breaches of regulatory requirements, which are related.
- where formal enforcement action is necessary the person responsible should be held to account. Where several persons share responsibility, we will take action against those who can be regarded as primarily in breach

### **3.0 ENFORCEMENT FOR COMPLIANCE**

#### **3.1 Inspection and Intervention Programme**

Relevant business activities and/or premises are risk assessed to inform an inspection and/or intervention programme, and the level of risk is reviewed regularly. We will focus our greatest inspection effort on those regulated where risk assessment shows that both:

- A compliance breach or breaches would pose a serious risk to a regulatory outcome or to health or the environment;
- There is high likelihood of non-compliance by those regulated.

Inspection and intervention frequency will generally be risk based, but may additionally be determined by set, or prescribed, intervals and additional interventions may take place as part of a local or national campaign.

Visits are also made to businesses for other reasons, such as advice, as a result of an allegation or for a sample or test purchase and will probably be without prior notice.

#### **3.2 Sampling Programme**

The purpose of sampling is to protect public health and the environment and to verify standards. This enables officers to provide information and advice to improve business practices.



A sampling programme sets out samples, test purchases (e.g. foodstuffs) the collection of materials (e.g. soil, air, water) taken in response to enquiries, as a part of a planned survey/exercise or as a result of officer or national initiatives. The programme sets out planned activities and targets for the year, concentrating efforts into risk-assessed areas of trade or products in order to ensure the most effective use of resources.

### **3.3 Primary Authority Principle**

Under Primary Authority, a local authority partners with a business or group of businesses to provide them with regulatory advice that other authorities have to respect. Primary Authority is a statutory scheme underpinned by Statutory Guidance which includes obligations for local authorities

We will consider requests for prospective partnerships from businesses which have their decision-making base within the Borough.

Where businesses have a Primary or Home Authority elsewhere, officers will follow the inspection plan for that business and will contact the Primary Authority at the earliest practicable time.

### **3.4 Statutory Notifications**

Where appropriate we will consult and work with a wide range of other agencies and report incidents and enforcement actions to relevant bodies, such as

- Department for Business Energy and Industrial Strategy;
- Department for Levelling up, Housing & Communities
- Department for Environment Food and Rural Affairs;
- Department for Work and Pensions;
- DVLA;
- Environment Agency;
- Health and Safety Executive;
- Food Standards Agency;
- Office of Fair Trading;
- Staffordshire County Council;
- Staffordshire Fire and Rescue;
- Trading Standards;
- UK-Health Security Agency

and any other relevant statutory bodies.





We will respond appropriately to notifications, such as notifications from the Health and Safety alerts and food safety alerts from the Food Standards Agency. Information will be shared with other regulators where it is appropriate to do so.

The authority will work alongside partner agencies in pursuit of the objectives of the Serious Organised Crime Strategy which aims to reduce the level of serious and organised crime by maintaining the Pursue, Prepare, Protect and Prevent delivery framework;

- To pursue offenders through prosecution and disruption
- To prepare for when serious and organised crime occurs and mitigate impact
- To protect individuals, organisations and systems from the effects of serious and organised crime
- To prevent people from engaging in serious and organised crime

### 3.5 Enforcement Visits

When conducting enforcement visits, other than for test purchasing or covert purposes, officers will make their identity known and explain why they are there. Officers may make combined visits with other agencies where there is a shared and/or aligned enforcement role.

### 3.6 Evidence Gathering

The authority will record complaints it receives and the action it takes in response. We will encourage those who provide information to supply their contact details and explain how the information they provide may be used. Generally, the authority will only be able to take enforcement action if their account can be confirmed in a form admissible to the courts – i.e. witness statement.

Officers may also identify potential non-compliance as part of their routine duties.

We may use search engines, internet listings companies, and review publically shared social media to establish, for example to confirm if businesses operate from within Newcastle-under-Lyme Borough. Where this information suggests there needs to be registered or licensed etc. we will contact them to advise them of their obligation, escalating our actions if they fail to respond promptly.

Officers will only carry out covert surveillance where such action is justified and endeavours to keep such surveillance to a minimum. Any officer intending to acquire data covertly will only do so if the evidence or intelligence sought cannot be obtained by any overt other means. All covert surveillance will be undertaken in accordance with the Councils 'Policy and Guidance on the use of RIPA' (Regulation of Investigatory Powers Act 2000 as amended)

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### 3.7 Enforcement in Local Authority Establishments

Officers will carry out enforcement within local authority owned, occupied or operated premises (e.g. crematorium for pollution, prevention and control and leisure centres, fly tipping on Council land) in a manner consistent with any other business. Any serious breaches of law that may be detected in such establishments will be brought to the attention of the responsible Service Director and Chief Executive without delay.

Contract caterers that operate within Local Authority establishments will be assessed in accordance with the Food Law Code of Practice and be inspected accordingly.

### 3.8 Powers of Entry

In most circumstances the exercising of powers of entry is unnecessary because access is voluntarily given. If access is denied, then officers may exercise powers of entry which may be immediate or may require at least 24 hours written notice of the intention to enter a premises.

Where appropriate we will seek to obtain a warrant from the Magistrates' Court to enter premises where legislation provides for this and the circumstances justify the action.

We will have appropriate regard to the Protection of Freedoms Act 2012 and the associated Code of Practice on Powers of Entry

<https://www.gov.uk/government/publications/powers-of-entry-code-of-practice>

## 4.0 ENFORCEMENT OF NON-COMPLIANCE

### 4.1 Levels of enforcement action

In assessing what enforcement action is necessary and proportionate,;

The options available (but not limited to) are:

#### 4.1.1 No Action

In certain circumstances, contraventions of the law may not warrant any action. Consideration will be given to whether the resultant cost of action would outweigh the detrimental impact of the contravention (sometimes referred to as the public interest test). A decision of no action **may** also be taken where formal enforcement



is inappropriate in the circumstances. In such cases we will advise the offender of the reasons for taking no action.

#### **4.1.2 Informal Action and Advice**

For minor breaches of the law, we may take informal action.

Informal action can include advice, verbal or written warnings, letters requiring action, inspection reports. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done.

The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance. Failure to comply could result in an escalation of enforcement action.

We will be clear about what are requirements and what are recommendations.

#### **4.1.3 Fixed Penalty Notices**

Certain offences may be dealt with by fixed penalty notices (FPN) where prescribed by legislation. An FPN is recognised as a low-level enforcement tool and avoidance of a criminal record for the defendant.

In certain instances, a FPN is the only enforcement option e.g. evidence of smoke from a chimney in a smoke control area

In other instances, we have an option to administer a FPN on the first occasion without issuing a warning. Such matters may include dog fouling, littering, waste disposal activities, breach of a PSPO (Public Space Protection Order). This list is not exhaustive.

The alleged offender's choice to not cooperate with the officer (e.g. refuse to give a name and address), to dispute or not pay the FPN may result in the case being escalated to the Magistrates Court.

We will only offer a FPN where we have robust evidence that an offence has been committed by the individual. This may be evidence gathered directly by Council Officers, or that passed to officers by partners documented in a form admissible to the courts.



#### 4.1.4 Penalty Charge Notices

Penalty Charge Notices (PCNs) (e.g. parking tickets) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of

money to the enforcer in recognition of the breach. Failure to pay the PCN may result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

#### 4.1.5 Voluntary Closure, prohibition, surrender or undertaking

A business or individual may in some circumstances, where there is an imminent risk, provide an offer to :

- Voluntarily close premises
- Voluntarily prohibit and cease to use any product, equipment, treatment, process or building
- Voluntarily surrender to us an item or product associated with the imminent risk.

In such circumstances the proprietor or individual would be requested to confirm their undertaking in writing. Failure to comply may result in further formal action.

#### 4.1.6 Formal/Statutory Notice

Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately and be prohibited. In other circumstances they must cease or change within a reasonable time and consider the seriousness of the contravention and the implications of the non-compliance.

All notices issued will include details of any applicable appeals procedures.

#### 4.1.7 Works in Default

Following the service of a notice (section 4.1.6) certain types of notice allow works to be carried out in default. This means that if a notice is not complied with [a breach of the notice] we may carry out any necessary works to satisfy the requirements of the notice ourselves.

Works in default may be carried out where:-

- There is no reasonable prospect of the person responsible carrying out the work, e.g. the person is absent



- There is an imminent risk to public or the environment
- Hazard to health, e.g. unsafe electrics
- A prosecution is not appropriate
- A prosecution has been brought and the works have not been carried out.
- A nuisance exists and it is appropriate to get the nuisance abated quickly.

Where the law allows, we may then charge the person/business served with the notice for any cost we incur in carrying out the work, including administration. Failure to comply may result in further formal action.

Where the authority is required to undertake works in default it will ensure that the works are appropriate, and the costs incurred are not unduly excessive.

#### **4.1.8 Forfeiture Proceedings**

This procedure, dealt with through an application in an appropriate court, may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the marketplace or being used to cause a further problem.

#### **4.1.9 Seizure**

Certain legislation enables officers to seize goods, equipment or documents, for example. unsafe food, sound equipment that is being used to cause a statutory noise nuisance, workplace articles and/or substances, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods, we will give written notification of the seizure as soon as reasonably practicable for example a Detention of Food Notice.

Where appropriate we will explain the procedure for their reclaim, and indicate any cost associated with storage, return or where applicable disposal of items. We will ensure that costs incurred are not unduly excessive.

#### **4.1.10 Civil Penalties**

Under section 126 and schedule 9 the Housing and Planning Act 2016 local housing authorities can impose a civil penalty as an alternative to prosecution for the following offences:

- failure to comply with an improvement notice (section 30)
- offences in relation to licensing of houses in multiple occupation (section 72)
- offences in relation to licensing of houses under part 3 of the act (section 95)



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- offences of contravention of an overcrowding notice (section 139)
- failure to comply with management regulations in respect of houses in multiple occupation (section 234).

A civil penalty can also be imposed for breaches of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

#### 4.1.11 Injunctive Actions

Injunctive action includes agreements and formal undertakings to improve compliance which, if breached, may lead to the obtaining of an injunction in the civil law courts.

In situations where the non-compliance under investigation amounts to anti-social behaviour, such as persistent targeting of an individual or a group of individuals in a particular area, then Anti Social Behaviour Orders as appropriate or Criminal Behaviour Orders may be sought to stop the activity.

#### 4.1.12 Simple Caution

A simple caution is an alternative means for dealing with low-level, mainly first-time offending. The aims of the simple caution are to deal quickly and simply with offences, save Court time and reduce the likelihood of reoffending.

A simple caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

The criteria for issuing a simple caution depends on:

- the nature of the offence – a simple caution cannot be issued where the offence is indictable only
- the offender making a clear and reliable admission of the offence before simple caution can be offered;
- the evidence meets the evidential test and that the public interest is in favour of prosecution
- the offender agrees to receive a simple caution
- the offender must be 18 years or over

The offender should not have received a simple caution for a similar offence within the last 2 years.

The Council has opted to follow the guidance issued by the Government in relation to the issuing of simple cautions for details on the Ministry of Justice Guidance visit [here](#)

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The person administering the caution will be an appropriate Senior Officer employed within the Council.

If the caution is not administered, because the suspect refuses to accept it, the facts of the case will be reviewed again, without the option of a simple caution, and a prosecution may result.

A record of the caution will be kept for 2 years. If the offender commits a further offence, within that 2-year period, the caution may influence our decision to take a prosecution. If during the time the caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

#### **4.1.13 Benefits Cautions/Sanctions**

The benefits legislation provides for additional sanctions, beyond those applicable to other areas of our work. These include administrative penalties. These are also used as an alternative to prosecution. In such cases the Administrative Penalty and any linked caution will be retained on file for five years.

These are issued if the circumstances are such that the interests of the public and justice would be better served without recourse to legal proceedings in the first instance.

#### **4.1.14 Administrative Penalty**

Under Section 115 of the Social Security Administration Act 1992 a financial Administrative Penalty may be issued as an alternative to a prosecution in matters relating to Housing and Council Tax Benefit.

In determining whether to offer an Administrative Penalty there must be sufficient evidence in which to consider commencing criminal proceedings. The offer of an Administrative penalty is more likely in cases where dishonesty does not form part of the offence, it is the first time the customer had caused a fraudulent overpayment or there was a clear lack of intent on the part of the customer.

An Administrative Penalty cannot be imposed and there is no obligation on the part of any person to accept it. If accepted that person has 14 days to withdraw their agreement to pay the penalty ('cooling off period'). If the penalty is not paid, then civil recovery of the debt will be initiated in the County Court.



Where an Administrative Penalty has not been accepted or a person has withdrawn their agreement to pay, then alternative enforcement action will be considered in respect of the original breach. Administrative Penalties are not recorded as a criminal offence.

#### **4.1.15 Refusal, Revocation or Suspension of a Licence**

Certain types of businesses, premises and individuals require licenses to operate legally. A refusal, revocation or suspension of a licence will normally ensue when one or more of the following criteria are met:

- deliberately or persistently breached legal obligations which likely to cause material loss or harm to others.
- deliberately or persistently ignored written warnings or formal notices
- endangered the health, safety or well being of people, animals or the environment
- obstructed an officer
- non-payment of relevant fee
- providing false or incomplete information
- not fit and proper person.
- qualifying criteria not met

#### **4.1.16 Prosecution**

A prosecution is undertaking legal proceedings through the Courts against a person, company or trader in respect of a criminal offence.

We will use discretion in deciding whether to initiate a prosecution. Other approaches to enforcement can sometimes promote compliance with legislation more effectively. However, where the circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may be appropriate.

Each case will be treated as unique and considered on its own facts and merits with due consideration to the Equality Act 2010 and the Human Rights Act 1998. All the circumstances surrounding the case will be considered including the social benefits and costs associated with bringing the matter to the attention of the Courts.

The prosecution of offenders will be used judiciously but, without hesitation, against those businesses or individuals where the law is broken and the health, safety, well-being or amenity of the public, employees and consumers are subject to serious risk.





Legal advice will be taken to ensure that only those cases presenting a realistic prospect of conviction will be pursued. We will have due regard to the availability of any defences and to any explanation, apology or other issue referred to by the suspect by way of mitigation.

The decision to prosecute will consider the criteria set down in the Code for Crown Prosecutors, issued by the Crown Prosecution Service. Both stages of the 'Full Code Test' as set out in the Code for Crown prosecutors will be applied in two stages (i) the evidential stage; followed by (ii) the public interest stage.

#### **4.1.17 Bankruptcy and Winding-Up Petitions**

Bankruptcy proceedings under the jurisdiction of a bankruptcy court allow the property of a debtor to be seized. That property may then be realised and, subject to certain priorities, distributed rateably amongst the people to whom the debtor owes money.

Bankruptcy is only applicable to individuals, partnerships and not to companies.

Liquidation is the process of bringing a company to an end by liquidating (winding-up) or realising a company's assets to discharge its debts.

#### **4.1.18 Proceeds of Crime Applications**

Where the enforcement action is criminal the Council can use the Proceeds of Crime Act 2002 legislation to recover money. Applications may be made for the confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct.

Proceedings are conducted according to the civil standard of proof.

Applications are made after a conviction has been secured. Any proceeds received from the proceeds of crime act action will be used in line with relevant guidelines.

#### **4.1.19 Mediation**

Mediation is a type of alternative dispute resolution and can be used to resolve almost all types of civil dispute for example an appeal against an Abatement Notice. Mediation may take place when both parties agree to it. There is usually only one opportunity to mediate during the enforcement process.



## **5.0 DETERMINING WHETHER A PROSECUTION OR CAUTION IS APPROPRIATE**

We apply the full code test to determine whether a prosecution or simple caution is viable and appropriate.

We follow guidance set by the Crown Prosecution Service when applying the tests:

**The evidential stage:** There must be enough evidence to provide a 'realistic prospect of conviction' against each defendant on charge.

**The public interest stage:** There may be public interest factors which are in favour of or are against prosecutions. These must be weighed-up before enforcement action is taken.

A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

### **5.1 The evidential stage**

The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the offender has put forward or on which the offender intends to rely on. It means that an objective, impartial, and reasonable jury or bench of magistrates or judge hearing a case alone properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

This is a different test from the one that the courts themselves must apply. A court may only convict if it sure that the defendant is guilty.

When deciding whether there is enough evidence to prosecute, the investigating officer(s), along with the departmental managers must consider the following questions:

- Can the evidence be used in court?
- Is the evidence reliable?
- Is the evidence credible?

### **5.2 The public interest test**

In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.



When deciding the public interest, prosecutors should consider each of the following questions:

- How serious is the offence committed?
- What is the level of culpability of the suspect?
- What are the circumstances of and the harm caused to the victim?
- Was the suspect under the age of 18 at the time of the offence?
- What is the impact on the community?
- Is the prosecution a proportionate response?

The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will vary according to the facts and merits of each case.

It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead, and those factors put to the court for consideration when sentence is passed.

## 6.0 REVIEW

The enforcement policy will be reviewed following significant changes to relevant legislation or government guidance.

However, it will be the subject of regular evaluation and, if necessary, formally reviewed at any time. Minor changes would be made where:

- they are to correct an administrative error
- they are a change needed because something is no longer possible or legal
- there is no foreseeable detrimental effect

